

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 60 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

M C BHATT

Versus

JERAMBHAI PURSHOTTAMBHAI

Appearance:

(MR RV DESHMUKH) for Petitioner

MR MAHENDRA K PATEL for Respondent No. 1

MR MA PATEL, APP for Respondent No.2.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 24/11/1999

ORAL JUDGEMENT

1. The complainant M.C. Bhatt serving in Surat Municipal Corporation filed complaint bearing PFA Case No. 52/1984 before the Ld. Judicial Magistrate First Class at Surat against the respondent, hereinafter referred to as 'the accused', for the offence punishable under sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (for short 'PFA Act') on following

brife facts :-

2. The complainant, as a Food Inspector was on his duty as such at 6.15 in the morning of 1/2/1984. When he reached near Vijay dairy, Ward No. 17 Adajan Road, he saw the accused proceeding in a tempo bearing No. GTC 5662 containing 11 cans of 40 litres each of buffalo milk, for the purpose of the same being sold. The complainant interrogated him at the aforesaid place in presence of witnesses and selected two cans of 40 litres each for taking sample milk. He accordingly purchased milk from each of the two cans bearing code no. C 354 and C 355 respectively after informing the complainant about the same. He accordingly purchased 7 litres of milk from each of the cans and respectively collected it in two plastic jugs duly made clean. He then made three parts of the milk so collected from each of the jugs and accordingly made three samples in three glass bottles each after adding 19 drops of formalin in each of the bottles. After following necessary procedure of applying seal and making Panchnama in that respect he sent one bottle from each of the samples (C 354 and C 355) to the Public Analyst at Surat and remaining two sealed bottles from each of the samples with necessary slips were sent to the Local health Authority, Surat. He paid the price of the sample milk as particularised in the complaint. The Public Analyst, Surat, after analysing and examining the milk found that in sample milk bearing C 354 fat was less to the extent of 10%, whereas in sample milk C 355 fat was less to the extent of 6.66%. The complainant therefore, sought sanction from the Local Health Authority which was received on 2/8/1984. The complainant, therefore, filed the complaint on 8/8/1984. Bailable warrant was issued returnable on 31/8/1984 and the matter was first placed before the Ld. Magistrate on 5/11/1984. The complainant was examined at exh. 7. He produced documents exhs. 8 to 13 in his evidence. He also produced documents exh. 21, 22 and 26. The accused was charged as per exh. 22 and he denied the charge as per exh. 23. Thereafter Panch witness Jayantibhai Jagjivandas Patel was examined at exh. 25 and Panchnama was placed on record at exh. 26. One Kacharabhai Dhanjibhai, who was present at the place of incident was examined at exh. 27. No other witness was examined. At exh. 33 further statement of the accused was recorded. After hearing the submissions made on behalf of both the parties, the Ld. Magistrate rendered impugned judgment and order of acquittal dated 28/7/1987 on two grounds. He firstly found that the complainant failed to produce before the Court required notification issued from the State Government as per section 9 of the PFA Act; whereas

the true copy of the notification which was placed on record at exh. 8 did not disclose the name of the complainant as one appointed by the State Government. It disclosed names of one Ranjitbhai Umedchand Shah and another Sudhakar Gopiram Majmudar as persons appointed as Food Inspectors by the State Government. The Ld. Magistrate, therefore, came to the conclusion that the fact about the complainant having been appointed as the Food Inspector by the State Government has not been established by the prosecution. He also exonerated the accused on the ground of delay in filing the complaint as well as in sending the copy of the report to the accused as required by the provisions of sections 10 and 13(2) of the PFA Act. He came to the conclusion that in absence of any explanation rendered by the complainant for the delay the accused deserves benefit of doubt.

3. Being aggrieved with and dissatisfied by the aforesaid judgment and order of the acquittal the complainant moved Misc. Criminal Application No. 2270 of 1987 and upon leave having been granted in that proceeding, the appeal came to be admitted which appeal has now been placed for final hearing before this Court.

4. I have heard the Ld. A.P.P. appearing for the State and Ld. advocate appearing for the accused. Notice was issued to the complainant for appearing before this Court in view of the fact that the Ld. Advocate Mr. R.V. Deshmukh is appointed as an Education Tribunal. No one has appeared for the complainant, who happens to be the appellant in this appeal, for arguing the matter. However, I have considered the grounds of his appeal for the purpose of disposing of this appeal on merits.

5. In his appeal the complainant has contended that the Government Gazette on which the Ld. Magistrate has placed reliance did not show his name as the person appointed by the State Government as required u/S. 9 of the PFA Act. However, he appeared before the Ld. Magistrate in several other cases as Food Inspector and the Ld. Magistrate could have taken judicial notice about he having been duly appointed as a Food Inspector and in that view of the matter, he should have been given further opportunity to produce the original of the Gazette, true copy whereof has been produced by the prosecution for showing that his name did appear in the Government Gazette. Apart from the fact that in this appeal the complainant has not produced any copy of the Gazette showing his name or any document in the form of the original Gazette or notification issued by the State Government, the complainant has also not explained the

appearance of two other persons from the Surat Municipal Corporation as having been duly appointed as Food Inspectors by the State Government. In the absence of any explanation in this respect even by the Ld. A.P.P. this Court is not inclined to uphold the contention of the complainant - appellant in this appeal particularly after passage of nearly 11 years from the date of filing of this appeal. This is more particularly in the context of the fact that the alleged shortage of fat contents in the sample milk is negligible.

6. Mr. M.K. Patel, Ld. Advocate placed reliance upon a decision of the Madhya Pradesh High Court in the case of Sadhram v. State of Madhya Pradesh, 1994 (2) 44 PFA Cases page 1, where Madhya Pradesh High Court at Jabalpur held that violation of section 9 of the PFA Act would render the conviction unsustainable.

7. Next is the question of delay on which the accused has been exonerated. It is true that delay per se would not enure to the benefit of the accused. It is true that the complainant has not availed of his right u/S. 13(2) of the PFA Act for getting sample examined at Central Food Laboratory. It is also true that in the absence of report from the Central Food Laboratory, Public Analyst report placed on record by the prosecution will have to be accepted. However, in the present case it has been submitted on behalf of the accused that the prejudice to the accused can be shown from the circumstances appearing in the record of the case itself. They are : The evidence of the complainant would indicate that he did not take the preservative from the Local Authority or from any Public Department and he saw to the purchase of the preservative from the market; whereas bill/bills in that respect has/have not been placed on record. It has not been shown as to whether required quality and quantity of the preservative has been added to the sample milk. In this background delay of more than six months in the present case would assume importance. Keeping present before mental eyes these circumstances, the Public Analyst's report might be considered. Exhs. 15 and 16 respectively are the reports with regard to two samples in question. The first report indicates contents of fat 5.4% and solid not fat 9.6%; whereas second report indicates fat 5.8% and solid not fat 11.2%. The required standards are respectively 6% and 10% totaling to 16%. In the present case, accordingly, both the reports would indicate total percentage having been satisfied or nearly satisfied the percentage of less fat than required in each of the two samples is negligible. The Ld. Magistrate has observed

the witnesses giving evidence before him and his findings on facts upon appreciation of evidence about the delay should be taken as one impliedly resulting into prejudice to the accused. Mr. M.A. Patel, Ld. A.P.P. for the State did not counter the factual aspect so indicated on behalf of the accused. This is the appeal of 1988 and bearing in mind all the aforesaid circumstances, this is a case where the present appeal is not required to be entertained on facts.

In the result, this appeal is dismissed.

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PVR.